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**MEMO ENDORSED**

May 5, 2023

BY ECF AND ELECTRONIC MAIL

The Honorable Katherine Polk Failla  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 618  
New York, New York 10007

***Walmart Inc., et al. v. Capital One, N.A., 23-cv-02942 (KPF)***

Dear Judge Failla:

We represent Defendant Capital One, National Association ("Capital One") in the above-captioned matter and write in regards to the Court's scheduling of a pre-motion conference in this matter for Tuesday, May 16, 2023 at 2:30 p.m. (ECF No. 53.) We respectfully request that the pre-motion conference be rescheduled to another date as I will be traveling on business during the week of May 15, 2023 and unable to attend.

We have raised this scheduling issue to counsel for Walmart and inquired regarding possible alternative dates for scheduling the conference for May 22, 23 or 24, as the Court's order of May 3, 2023 (ECF No. 53) sets further deadlines for pre-motion correspondence on May 10 and May 12. Counsel for Walmart has relayed that it objects to adjourning the conference until the week of May 22.

However, Walmart relayed that they do not object to rescheduling the conference for May 11 or May 12. To the extent those dates are convenient for the Court, Capital One is also available on May 11 before 4:30 p.m. and on May 12. If the Court is amenable to holding the conference on those dates, Capital One respectfully requests that the Court adjust the deadline for any pre-motion conference letter regarding Capital One's counterclaims (which were filed yesterday evening, ECF Nos. 56, 57) to May 8, with any response letter to be submitted by May 10.

Alternatively, Capital One requests adjourning the pre-motion conference to the week of May 22 and keeping the current pre-motion conference letter briefing schedule in place.

Capital One appreciates the Court's consideration of this matter and is happy to answer any questions the Court may have.

Respectfully submitted,

/s/ Mark P. Goodman

Mark P. Goodman

Cc: Counsel for Walmart

Application GRANTED. The conference currently scheduled for May 16, 2023 is hereby ADJOURNED to 11:30 a.m. on **May 24, 2023**. This adjournment does not impact the deadlines for pre-motion submissions regarding Defendant's counterclaims. (See Dkt. #53).

The Court is sympathetic to Plaintiffs' preference that the conference take place earlier, but scheduling conflicts prevent it from holding the conference on their suggested dates.

The Clerk of Court is directed to terminate the motion at docket entry 59.

Dated: May 5, 2023  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE